Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1994

MOHAMMAD S. KAYANI,

Petitioner,

v.

RICHARD L. FIELDS and
OTOLARYNGOLOGY ASSOCIATES, P.C.,

Respondents.

**On Petition For Writ Of Certiorari
To The Supreme Court Of Virginia**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1) Where one party to a proceeding elects peremptory jury strikes of only one gender without stating a clear, neutral and objective basis therefor and the other party objects and offers a *prima facie* basis for the strikes being gender based, is this a violation of Constitutional protections and should the case be reversed and remanded for a new trial?

LIST OF PARTIES

The Petitioner is:

Mohammad S. Kayani

Represented by:

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The Respondents are:

Richard L. Fields, M.D. and
OTOLARYNGOLOGY ASSOCIATES, P.C.

Represented by:

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STATEMENT OF JURISDICTION

Petitioner, Mohammad S. Kayani seeks review of the Virginia Supreme Court ruling of June 10, 1994, denying his Petition for Rehearing of his Petition for Appeal filed in that court. Petitioner had originally sought review by the Supreme Court of Virginia of the judgment and rulings of the trial court, the Circuit Court for the County of Fairfax, Virginia, and rulings issued subsequently thereto. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

United States Constitution, Amendment XIV, Section I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE FACTS

This is a case of medical negligence (malpractice) in which Petitioner, Mohammad S. Kayani, alleges he sustained permanent injury to his facial nerve as a result of

negligent care afforded him by Respondents, Richard L. Fields and Otolaryngology Associates, P.C., in treatment for chronic ear infections. Mohammad S. Kayani (hereinafter "KAYANI") filed his Motion for Judgment in the Circuit Court for the County of Fairfax, Virginia, on or about September 28, 1992, after compliance with the notice provisions of Chapter 21.1 of Title 8.01 the 1950 Code of Virginia, as it then existed. An Answer and Grounds of Defense on behalf of Richard L. Fields, M.D. and Otolaryngology Associates, P.C. was filed on or about October 20, 1992. This matter came to trial before a jury in the Circuit Court for the County of Fairfax, Virginia, the Honorable Michael P. McWeeny presiding, on September 27, 1993.

On the morning of the trial of this case before the Circuit Court for the County of Fairfax, Virginia, prior to the jury being sworn, KAYANI, by and through his counsel, made a motion and objected to the Respondents' peremptory jury strikes as gender based. The jurors stricken by Dr. Fields and by his corporation, Otolaryngology Associates, P.C., were all female, none of whom had responded to any question presented during *voir dire* in a way to make them stand out one way or the other, and two of whom had made no response during *voir dire* whatsoever. [See Trn. September 27, 1993, pp. 43-85, (Appendix A hereto)]. KAYANI's objection to the Respondents' jury strikes was based upon the United States and Virginia Constitutions and the cases of *Batson v. Kentucky*, 476 U.S. 79, 90 L.Ed.2d 69, 106 S.Ct. 1712 (1986), and *Edmonson v. Leesville Concrete*, 500 U.S. 614, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991), and the case law which has arisen thereunder, including the Virginia case

law. Respondents refused to state a clear, objective and neutral basis for each of their strikes (although counsel for KAYANI and the Court requested that a basis be stated for the record) and counsel for Respondents expressed that KAYANI's motion and objection was "ridiculous." The trial court noted for the record that the venire was comprised mostly of women, with four men on the venire, and that KAYANI did strike one of the four male venire members, leaving only three men on the panel.[1] KAYANI offered to proffer the objective basis for his peremptory strikes, but it was not required of him, as Respondents declined to challenge the striking of those jurors from the venire. The trial court then denied KAYANI's motion, the jury was sworn, and opening statements were given.

The parties presented evidence on September 27, 28, and 29, 1993; and on September 30, 1993, the jury was instructed on the law of the case and the parties presented their closing arguments. The jury deliberated and rendered a verdict in favor of the Defendants (Respondents herein), Dr. Richard L. Fields and Otolaryngology Associates, P.C., and a Final Order was entered on October 22, 1993, [Appendix B hereto]. KAYANI preserved his objection as to the jury selection. KAYANI objected to the transcript of the trial as incomplete pursuant to the Rules of the Supreme Court of Virginia. The trial court heard argument on these objections on January 14, 1994, and

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[1] Please note that the transcript of this portion of the trial was incomplete and was the subject of an objection to the transcript. The trial court's order of January 14, 1994, making additions to the transcript is attached to this Petition as Appendix C.

entered an order including accurate additions to make the record complete. [Appendix C hereto].

KAYANI timely noted his appeal to the Supreme Court of Virginia, and his petition was timely filed. Defendants (Respondents herein) Richard L. Fields, M.D. and Otolaryngology Associates, P.C. filed a brief opposing KAYANI's Petition. On April 6, 1994, notice was given that KAYANI's Petition for Appeal was denied by the Virginia Supreme Court. [Appendix D hereto.] On or about April 20, 1994, and based upon the recent United States Supreme Court ruling in the case of *J.E.B. v. T.B.*, No. 92-1239, decided April 19, 1994, KAYANI timely petitioned for rehearing, which petition was denied by order of the Supreme Court of Virginia dated June 10, 1994. [Appendix E hereto.] Kayani now timely petitions this Court for a Writ of Certiorari, or in the alternative, for an order reversing and remanding this cause in order that the precedent of this Court may be upheld on issues of substantial constitutional import which merit the consideration of this Court.

ARGUMENT

1) **Where one party to a proceeding elects peremptory jury strikes of only one gender without a clear, neutral and objective basis therefor, denying the other party a jury representing a cross-section of the community, is this a violation of Constitutional protections and should the case be reversed and remanded for a new trial?**

YES.

Respondents struck only women from the panel and refused to state a neutral and objective basis therefor. In

response to KAYANI'S objection, Respondents merely noted there were more women on the panel than men. It is incumbent upon the party challenged to establish a record that peremptory challenges have not been used in a discriminatory manner. *See U.S. v. Skeeter*, 989 F.2d.496, (4th Cir.1993). Respondents declined to establish a neutral, clear and objective basis for the strikes. *Batson v. Kentucky*, 476 U.S. 79, 90 L.Ed.2d 69, 106 S.Ct. 1712 (1986).

It has been held that a jury must be selected from a "fair cross-section of the community", *Taylor v. Louisiana*, 419 U.S. 522, 42 L.Ed.2d 690, 95 S.Ct. 692 (1975), and when a state statute provided an excuse for women but not men to be relieved from jury service, a criminal defendant was denied his Sixth Amendment right to a venire comprised of a cross-section of the community. *Duren v. Missouri*, 439 U.S. 357, 58 L.Ed.2d 579, 99 S.Ct. 664 (1979). Further, the Fourteenth Amendment guarantees (in Due Process requirements) that an identifiable group cannot be barred from a jury. *Strauder v. West Virginia*, 100 U.S 303, 25 L.Ed.664, 10 Otto. 303-312 (1879). The *Batson* theory has been applied to civil cases. *Edmonson v. Leesville Concrete*, 500 U.S. 614, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991). In *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 90 L.Ed. 1181, 66 S.Ct. 984 (1946), the Supreme Court reversed a civil case because of the practice of not empaneling jurors working for daily wage because it denied a true and fair cross-section irrespective of the benign intent of the Court.

The systematic exclusion of women from a jury violates Fourteenth Amendment rights to due process. *Taylor v. Louisiana, supra; State v. Burch*, 65 Wash.App. 828, 830 P.2d 357 (Wash.App.1992); *DiDonato v. Santini*, 283

Cal.Rptr. 751 (1991); *U.S. v. DeGrosse*, 913 F.2d 1417 (9th Cir. 1990); and *People v. Irizarry*, 560 N.Y.S.2d 279 (1990). The United States Supreme Court ruled on this issue recently in the case of *J.E.B. v. T.B.*, No. 92-1239, decided April 19, 1994, ___ U.S. ___, ___ L.Ed.2d ___, ___ S.Ct. ___ (1994). The ruling of *J.E.B. v. T.B.* should be affirmed and upheld in this case, and this cause should be remanded for retrial.

In *Faison v. Hudson*, 243 Va. 397, 417 S.E.2d 305 (1992), the Supreme Court of Virginia reversed a cause on *Edmonson* grounds though *Edmonson* apparently had not been decided at the time the trial occurred. The appellant in *Faison* had made his objection on *Batson* grounds. This Court made a finding of no discrimination, though it ruled *Batson* did not apply. Yet even in *Faison*, there had been an attempt to offer a basis for the peremptory strikes (no matter how vague), whereas in the case at hand, no objective, rational basis was offered by the Respondents. In fact, Respondents essentially refused to offer an objective, rational basis for their strikes. Not only were the three jurors Respondents struck all female while the Respondent Fields was male, these jurors had not responded to any of the *voir dire* in a manner that would distinguish them in any way. Two of the jurors struck by Respondents made no response whatsoever to *voir dire*.

KAYANI respectfully submits that this Court should apply the precedents set by the rulings in *J.E.B. v. T.B.*, *Edmonson* and *Faison* to the case at hand. KAYANI'S objection to the jury/jury strikes of the Respondents should have been sustained and the trial court's failure to do so is reversible error. And, the Virginia Supreme Court's refusal of KAYANI's Petition for Appeal denies

KAYANI his constitutional right to a jury comprised fairly from a cross-section of the community without the imposition of bias based upon gender.

CONCLUSION AND RELIEF SOUGHT

WHEREFORE, your Petitioner, MOHAMMAD S. KAYANI, prays this Honorable Court grant his Petition for Writ of Certiorari; and/or reverse the final decrees of the Supreme Court of Virginia and of the Circuit Court for the County of Fairfax, Virginia, and remand this case for retrial consistent with this Court's ruling in *J.E.B. v. T.B.*; and for such other and further relief as the Honorable Court deems meet and proper in these premises.

Respectfully submitted,

MOHAMMAD S. KAYANI
By Counsel

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APPENDIX A

TRANSCRIPT OF PROCEEDINGS

VIRGINIA:

In the Circuit Court for Fairfax County

Mohammed S. Kayani,
Plaintiff,

v. **At Law No. 118723**

Richard L. Fields, M.D., et al.,
Defendants.

The Trial taken in the above-styled matter in the Circuit Court for Fairfax County, in the Courthouse thereof, Fairfax, Virginia, before the Honorable Michael P. McWeeny, Judge of said Court, on the 27th day of September, 1993, beginning at 10:05 a.m.

APPEARANCES

On Behalf of the Plaintiff:

Steven M. Garver, Esquire
Cheryl G. Rice, Attorney at Law
GARVER & MOLLER

On Behalf of the Defendants:

Norman F. Slenker, Esquire
SLENKER, BRANDT, JENNINGS & JOHNSTON

* * *

[p. 43] as taking between two and three days to try.

First, are any of you related by blood or marriage to either of the parties in this case?

(No response.)

THE COURT: Are any of you friends, clients, or former clients of any of the attorneys involved in the case? And let me introduce you to them now. I am sorry.

First, the Plaintiff in the case is Mohammed S. Kayani. He is the gentleman at the far end closest to you. He is represented by Mr. Steven M. Garver and Ms. Cheryl Rice.

Dr. Richard L. Fields is the gentleman now standing, and his attorney is Norman F. Slenker.

So, I will repeat the question. Are any of you friends, clients, or former clients of any of the attorneys involved in the case?

(No response.)

THE COURT: Do any of you have any personal interest in this trial or outcome of the case?

(No response.)

[p. 44] **THE COURT:** Have any of you acquired any information about the case or any of the parties from any source?

(No response.)

THE COURT: Are you sensible of any bias or prejudice against either party in this case?

(No response.)

THE COURT: Do any of you know of any reason whatsoever why you could not give a fair and impartial trial to each of the parties based solely on the law and the evidence you will hear over the next two or three days? Yes, ma'am?

JUROR: Your Honor, I may have a problem. I was here not too long ago on a grandchild of mine who is disabled, and we took suit against the doctor.

THE COURT: So, you feel that this case might be difficult for you to hear?

JUROR: I would have a difficult time.

THE COURT: Then I am [p. 45] going to ask you to step down, please.

For the record, it is on the Court's motion based upon the answer.

THE BAILIFF: Clyde Oberlander?

CLYDE OBERLANDER having been duly sworn by the Court Reporter, was examined as follows.

THE COURT: Good morning, sir. Did you hear my explanation of what the case is about?

MR. OBERLANDER: Yes.

THE COURT: Was there anything which I have said which raises a question in your mind of something you should respond to?

MR. OBERLANDER: I have a conflict with the third day if it stretches on to a third day.

THE COURT: What is the nature of the conflict, sir?

MR. OBERLANDER: I am a publisher and operate a sole business, and I have a previous appointment on that date with a high [p. 46] government official.

THE COURT: Let me ask you to step down to the bench and ask counsel to approach.

BENCH CONFERENCE

THE COURT: Yes, sir?

MR. OBERLANDER: I am a publisher, and I am the only sole employee of the firm, Bio Health, Incorporated. We publish preschool resource material, and I have an appointment with the head of the Bureau of Indian Affairs Wednesday, John Ippicanek, [sic] who is the Director of Native American Education. We are . . . I am going to present material to him with regard to preschool materials for the Native Americans.

THE COURT: How long has this appointment been scheduled, sir?

MR. OBERLANDER: A couple months.

THE COURT: I presume from what you said it would not easily be rescheduled.

MR. OBERLANDER: That is correct.

THE COURT: Is this a [p. 47] special situation?

MR. OBERLANDER: It could be, it could be.

THE COURT: Does either counsel with to follow-up with questions?

MR. GARVER: Your client . . . Mr. Oberlander?

MR. OBERLANDER: Oberlander, correct.

MR. GARVER: Well, they have you down on the jury list as a pharmacist.

MR. OBERLANDER: Well, I am a pharmacist and a pharmacologist. I retired from the Food and Drug Administration two years ago. Since that time, I have become a publisher, because my wife is an author.

MR. GARVER: I see she was an author.

MR. OBERLANDER: Correct.

MR. GARVER: You previously worked for Bio Health, Inc.?

MR. OBERLANDER: I am the [p. 48] president of Bio Health, Incorporated.

MR. GARVER: Is that the publishing?

MR. OBERLANDER: That is our publishing. We are incorporated, correct.

MR GARVER: You said you were a publisher ever since your wife was an author?

MR. OBERLANDER: Correct.

MR. GARVER: You just recently retired?

MR. OBERLANDER: I retired two years ago in June.

MR. GARVER: Okay.

THE COURT: Any questions?

MR. SLENKER: No.

THE COURT: Sir, let me ask you to step back to the jury box while I consult with counsel.

(WHEREUPON, the Court conferred with counsel.)

IN OPEN COURT

THE COURT: Sir, I will [p. 49] release you from this panel at this time, sir, if you would step down. You may be needed for something else.

THE BAILIFF: Leslie Palmatier, would you come forward, ma'am, and take the seat in the back row that the gentleman just left? LESLIE PALMATIER having been duly sworn by the Court Reporter, was examined as follows:

THE COURT: Again, did you hear my explanation about the case?

MS. PALMATIER: Yes.

THE COURT: Is there anthing I said to which you feel you should respond?

MS. PALMATIER: No.

THE COURT: All right. Mr. Garver, do you wish to inquire, sir?

MR. GARVER: I do, please, Your Honor. May I turn the . . .

THE COURT: Yes, sir.

MR. GARVER: Thank you.

Ladies and gentlemen, as the judge has indicated to you, my name is Steven Garver, and I represent Mr. Kayani along with Cheryl Rice, an associate of mine.

[p. 50] The judge asked whether or not any of you had been represented or had any contact with myself personally, and I guess I need to ask whether or not any

of you have been in contact with my firm, Garver & Moller in Reston which is where we are located. Have any of you?

(No response.)

MR. GARVER: I ask that question, because sometimes you get a surprise that somewhere [sic] down the road at prior times had contact with someone else in the firm.

This is a relatively new jury panel. How many of you have sat on juries before? Two? Sir, you are Mr. Stevenson is it?

MR. STEVENSON: Correct.

MR. GARVER: Mr. Stevenson, what type of a jury was that? Was it a criminal or civil case?

MR. STEVENSON: It was criminal Federal.

MR. GARVER: I am sorry?

MR. STEVENSON: It was a Federal criminal case.

[p. 51] **MR. GARVER:** Was there anything in that process or your experience in that process that troubled you or bothered you about how the process occurred that you think might interfere with how you might handle this case?

MR. STEVENSON: No.

MR. GARVER: All right. I saw another hand. Yes, and you are . . . is it Ms. Roach?

MS. ROACH: Correct.

MR. GARVER: Ms. Roach, you sat on a criminal or civil case?

MS. ROACH: Civil.

MR. GARVER: Was it in this court?

MS. ROACH: Yes, it was here.

MR. GARVER: How long ago was it?

MS. ROACH: Sometime in the last ten years.

MR. GARVER: Do you remember what kind of case it was?

[p. 52] **MS. ROACH:** A traffic violation case.

MR. GARVER: Automobile accident case?

MS. ROACH: Yes

MR. GARVER: Was there anything in that process that in any way troubled you?

MS. ROACH: No.

MR. GARVER: Do any of you know each other on the jury panel from any other source, club meeting, relatives, friends, social?

(No response.)

MR. GARVER: Have any of you ever had any ear surgery before?

(No response.)

MR. GARVER: Have any of you ever had any ailments of the ear or hearing which required you to go to an otolaryngologist for treatment?

(No response.)

MR. GARVER: How about anybody in your immediate families? Yes?

MR. RILEY: My father [p. 53] was . . .

MR. GARVER: I am sorry?

MR. RILEY: My father was almost totally deaf and had his sense much improved, because he had about three ear operations back in the 1960s.

MR. GARVER: You are Mr. Riley. Correct?

MR. RILEY: Yes, sir.

MR. GARVER: Mr. Riley, that occurred- . . . were those treatments in this area?

MR. RILEY: No, sir, in Kentucky.

MR. GARVER: As a result of that treatment, did you have particular dealings with the physicians or with the hospital?

MR. RILEY: No, sir.

MR. GARVER: Do you think that you learned any special information from that that might make you more knowledgeable than the average person about treatments?

MR. RILEY: No, sir.

[p. 54] **MR. GARVER:** With any of you, do any of you have any problem with medical treatment or the medical arts, if you will, for religious reasons or any type of a religious basis that in any way the traditional, if you

will . . . traditional may be a bad word, but the medical treatments as normally done by most physicians in this country or by hospitals in any way bothers you?

(No response.)

MR. GARVER: Do any of you have any religious reasons why you can't sit in judgment about some other individual?

(No response.)

MR. GARVER: Mr. Kayani here is an immigrant from Pakistan to here. Are there any of you have any concerns about or feel that in some respect he is less believable because of his Pakistani heritage or anything that troubles you about his background that you think you might be prejudiced in one way or another? It is okay if you are prejudiced; we just need to know that.

MR. SLENKER: Well, Your [p. 55] Honor, I would ask that that be stricken, because I really don't believe counsel means to say to the jury that it is okay if you have the prejudice.

THE COURT: I think the statement was meant it is okay to say so; it is just it is necessary to respond.

(No response.)

MR. GARVER: Have any of you been involved in any litigation before? You are Ms.?

MS. WEINERT: Molly Weinert.

MR. GARVER: Weinert?

MS. WEINERT: Yes. I was a witness at a trial when my company sued and was counter sued by another company.

MR. GARVER: And you are Ms. Wallace?

MS. WALLACE: Yes.

MR. GARVER: You have been involved in litigation?

MS. WALLACE: I have represented clients. I am an attorney.

[p. 56] **MR. GARVER:**

JUROR: In what kind of litigation have you represented people?

MS. WALLACE: That was a civil rights action in front of the D.C. Human Rights Commission.

MR. GARVER: Ms. Wallace, where do you practice?

MS. WALLACE: I am in-house counsel for a financial institution.

MR. GARVER: What institution is that?

MS. WALLACE: Columbia First Bank.

MR. GARVER: Do you have, through that relationship, do you have dealings from time to time with various litigation firms that represent the bank?

MS. WALLACE: Yes.

MR. GARVER: Do you have . . . I assume you have special knowledge of rules of evidence and things of that nature?

MS. WALLACE: To some [p. 57] extent, yes.

MR. GARVER: Do you have any particular knowledge about the tort field other than the standard law school course work?

MS. WALLACE: No, I have never done any tort work.

MR. GARVER: Were you ever employed by a firm other than Columbia First?

MS. WALLACE: Yes, I have been with a law firm.

MR. GARVER: By what firm were you employed?

MS. WALLACE: I was with Arnold & Porter and previously with a firm in Philadelphia, Wolfe, Blackshaw, & Selliscrime.

MR. GARVER: In those two firms, what type of work did you do?

MS. WALLACE: Banking, primarily banking, corporate, with both firms.

MR. GARVER: Did you have any exposure within either of those firms to . . . this is a medical negligence case, as the judge has told you. Did [p. 58] you have experience in dealing with or giving advice, sitting in on meetings with counsel that were involved in medical negligence cases?

MS. WALLACE: No.

MR. GARVER: Is there anything in your background or training that you think might in some way give

you some special knowledge that you might not be able to view the evidence fairly or follow the instructions of the Court, irrespective of what you believe the law ought to be?

MS. WALLACE: No, I don't think so.

MR. GARVER: Do you think there is any special knowledge that you would have in deliberations with other jurors that would give your opinion more weight than others?

MS. WALLACE: I don't believe so.

MR. GARVER: Are there any of the other jurors who believe that because Ms. Wallace has special training in law that in jury deliberations, her opinion may carry some more weight? All right.

[p. 59] **MR. WOO:** You have a hand up.

MR. GARVER: I am sorry. Yes, Mr. Woo?

MR. WOO: Getting back to your other question, I was once involved in a suit against myself and my company.

MR. GARVER: That was in a business trans . . . I am sorry?

MR. WOO: A malpractice.

MR. GARVER: Malpractice? What kind of malpractice?

MR. WOO: A pharmacy malpractice suit. It was settled out of court.

MR. GARVER: And you were the Plaintiff in that case?

MR. WOO: I was a Defendant.

MR. GARVER: You were a Defendant? Are you a pharmacist?

MR. WOO: Yes.

MR. GARVER: What [p. 60] company is it that you work for?

MR. WOO: At the time, it was People's Drug.

MR. GARVER: By whom are you employed now?

MR. WOO: Giant Food.

MR. GARVER: In which Giant Food are you employed?

MR. WOO: I am in Stafford, Virginia.

MR. GARVER: Have you always been in Stafford since you have worked for Giant?

MR. WOO: I am sorry?

MR. GARVER: Have you always been . . . since you have worked for Giant, have you always been in the Stafford area?

MR. WOO: No, I have been all around Fairfax, Reston, McLean.

MR. GARVER: Herndon? Herndon Giant as well?

MR. WOO: Well, as you get promoted, you get moved around.

[p. 61] **MR. GARVER:** Is that a yes, you have been in Herndon or you have not been in the Herndon Giant?

MR. WOO: I am sorry?

MR. GARVER: Have you ever been employed in the Herndon Giant?

MR. WOO: Oh, in Herndon, no.

MR. GARVER: Did your particular experience in being represented by counsel do you think in any way gave you some special information that you might bring that information to this jury panel during deliberations?

MR. SLENKER: I object to that, if your Honor please. I think that is an invasion of the jury's own province to deliberate among themselves and exchange their information. I don't believe that is a proper question to ask.

THE COURT: Perhaps if you could rephrase it.

MR. GARVER: Sure. Mr. Woo, do you think that, as a result of your experience in [p. 62] that litigation, do you think that you have some particular background or experience that would in some way impact on the jury, in other words, that you have some special knowledge that, if imparted to the jury during deliberations, from that experience might impact the jury's findings?

MR. WOO: Not especially. It was settled out of court. There was very little involvement.

MR. GARVER: As a result of your being a pharmacist, do you have special training in medicine?

MR. WOO: Somewhat.

MR. GARVER: And do you have training in medication?

MR. WOO: Yes.

MR. GARVER: Do you have training . . . you deal with doctors all the time?

MR. WOO: Yes.

MR. GARVER: Have you ever dealt with Dr. Fields or his office?

MR. WOO: I may have seen [p. 63] his prescriptions.

MR. GARVER: When you say that, you are saying you just don't recall? Is that fair?

MR. WOO: Well, we see prescriptions written by doctors throughout the metro area.

MR. GARVER: Sure. What I am getting at, though, is it fair to say you just don't remember who, whether or not Dr. Fields' prescriptions you have seen or not?

MR. WOO: Right.

MR. GARVER: You don't have any specific recollection of dealings with Dr. Fields' office?

MR. WOO: No.

MR. GARVER: You will hear some expert testimony in this case. As a result of your special training, if you were to hear expert testimony about medical issues

that differed from what you believe you know from your special training, do you think you could listen to what the experts have to say, or would [p. 64] you feel compelled to either tell the other members of the jury or discuss with the other members of the jury or consider the special knowledge that you have from your training?

MR. WOO: I can certainly listen.

MR. GARVER: Okay, but what I am saying is, if you heard expert testimony which differed from what you believed to be correct from your training, do you think you could ignore your training in considering the evidence during deliberations or in giving information to other members of the panel?

MR. WOO: Yes, I would listen to the evidence.

MR. GARVER: As opposed to your own special knowledge?

MR. WOO: Yes.

MR. GARVER: Is there anybody on the panel . . . and I will give you a list of a number of witnesses that may testify in this case. There is a Dr. George Singleton who is a professor at the University of Florida and who is a physician ENT. Do any [p. 65] of you know Dr. Singleton?

(No response.)

MR. GARVER: There is also a Dr. Jeri Carr who is a neurologist. Do any of you know Dr. Carr?

(No response.)

MR. GARVER: There is also a Wendy Fox who is a speech therapist. Do you know Ms. Fox?

(No response.)

MR. GARVER: Mohammed Kahn, Mr. Kahn. Do any of you know Mr. Kahn?

(No response.)

MR. GARVER: And I assume from what you have said so far you don't know Mr. Kayani, but I assume you don't know Mrs. Kayani as well. Is a that [sic] fair statement?

(No response.)

MR. GARVER: There is also a Dr. Wan Shin from Fairfax Hospital. Do you any of you know Dr. Shin?

(No response.)

[p. 66] **MR. GARVER:** A Dr. Michael Morris from Georgetown. Do any of you know Dr. Morris?

(No response.)

MR. GARVER: Do any of you know a Dr. Pulaski from the Neurology Center?

(No response.)

MR. GARVER: Have any of you had any dealings or connection with Fairfax Hospital other than the routine that maybe you have been there before in the emergency room or for minor treatment? Do any of you have any experience with those hospitals, Fairfax or Georgetown?

(No response.)

MR. GARVER: Do any of you have any special training in medicine? I know Mr. Woo has indicated he has some. Does anybody else here?

(No response)

MR. GARVER: How about anatomy or physiology?

(No response.)

MR. GARVER: I think that Mr. Woo had responded to an earlier question that maybe [p. 67] some of you didn't have a chance to. Is there anybody else who has been involved in any litigation or any case or claim that has been brought?

(No response.)

MR. GARVER: I am sure some of you have had an opportunity to view the media, television, and otherwise observe some of the public debate about the quality of health care. I assume everybody is familiar with that?

(No response.)

MR. GARVER: And I assume a lot of the people here had an opportunity to hear President Clinton's speech or at least hear some of the debate about it and the proposals. As a result of that, I am sure some of you have heard something about there are those that have concerns about medical malpractice and medical negligence cases. Has everybody here heard of some of those disputes in public debate?

Okay, Ms. Null is it?

MS. NULL: Yes.

MR. GARVER: You say you haven't heard anything about that?

[p. 68] **MS. NULL:** Not on that particular part of it, not about malpractice. Other pieces of it.

MR. GARVER: Have any of the others of you not heard any of the public debate about whether or not malpractice has any impact on the cost or quality of health care?

(No response.)

MR. GARVER: Are there any of you who feel that medical malpractice cases are a significant problem in our society and should not in any way be permitted or should be restricted?

Yes, sir, you are Mr. Walsh?

MR. WALSH: Walsh. I think there is a problem. I don't think it should be prohibited, but I think there is a problem with malpractice.

MR. GARVER: When you say that, is that based on information that you have some special knowledge of, or is that basically what you have read in the media and heard on television?

MR. WALSH: General information.

[p. 69] **MR. GARVER:** Is there . . . that, I assume, is generic to the term malpractice suits?

MR. WALSH: That is right.

MR. GARVER: Irrespective of that, if you heard evidence in this case in which you heard evidence

and were convinced and made a finding that there was medical negligence or medical malpractice and it caused injury to Mr. Kayani, would you hesitate to award him damages?

MR. WALSH: No, but I have to be convinced of the justification for the damages and the amounts.

MR. GARVER: If the Court ends up instructing you that you need to make a determination based on the preponderance of the evidence, would you have any difficulty with that?

MR. WALSH: No.

MR. GARVER: Is there anybody else that has any problems with the concept of medical malpractice as a result of what they may have read or heard in the media or otherwise?

[p. 70] (No response.)

MR. GARVER: Is there anybody here who has any concerns about the tort system overall? When I say tort, I am not sure that you all know what I am talking about, but our legal system when it deals with injuries to people.

MR. SLENKER: Well, Your Honor, I have to object. I don't believe that that is a proper area of inquiry. Whether they have concern with the system or they don't have a concern with the system, the system is here. You are presiding over it, and I think that whatever their views may be is of no moment.

THE COURT: Well, I think that their views can be inquired into, and I am going to allow it.

MR. GARVER: Do any of you have any concerns about our court system as it deals with negligence actions and things of that nature?

(No response.)

MR. GARVER: Do any of you have a problem with the concept that if a person is negligent to another to whom he owes a duty and that [p. 71] negligence causes an injury that the negligent party should be held accountable civilly, that is, for damages?

(No response.)

MR. GARVER: Does anybody here think doctors should have special status in our legal system?

(No response.)

MR. GARVER: I don't have any other questions. The panel is fine. Thank you, Your Honor.

THE COURT: Mr. Slenker?

MR. SLENKER: Thank you, Your Honor.

Ms. Wallace, I believe not only are you an attorney, but your husband is an attorney also?

MS. WALLACE: Yes, that is correct.

MR. SLENKER: Where does he practice?

MS. WALLACE: He practices with the Washington office of a Pittsburgh firm called Eckert, Siemens, Chern & Malott.

[p. 72] **MR. SLENKER:** Does he specialize?

MS. WALLACE: Yes, he does.

MR. SLENKER: In what area of the law?

MS. WALLACE: Commercial law, bankruptcy.

MR. SLENKER: Is he a member of the Virginia Bar?

MS. WALLACE: No, he is not.

MR. SLENKER: Are you?

MS. WALLACE: Yes, I am.

MR. SLENKER: Are you a member of the D.C. Bar?

MS. WALLACE: Yes.

MR. SLENKER: Any other Bars?

MS. WALLACE: Pennsylvania.

MR. SLENKER: How about [p. 73] your husband?

MS. WALLACE: He is also a member of the Pennsylvania Bar, Iowa, and I think still Connecticut.

MR. SLENKER: Was he ever involved in the health care law field in practice at all?

MS. WALLACE: No.

MR. SLENKER: And I take it from your previous answer, you have not been either?

MS. WALLACE: No.

MR. SLENKER: He works out of the D.C. office?

MS. WALLACE: Yes.

MR. SLENKER: So, it is in this area?

MS. WALLACE: Yes.

MR. SLENKER: Mr. Walsh, I believe your wife is a financial planner?

MR. WALSH: That is right.

MR. SLENKER: Is she self-employed, or does she work for somebody?

MR. WALSH: She works for [p. 74] somebody.

MR. SLENKER: The name of that organization would be what sir?

MR. WALSH: English & Associates.

MR. SLENKER: English & Associates? Are they here in Virginia?

MR. WALSH: Yes, they are.

MR. SLENKER: Where, sir?

MR. WALSH: In Fairfax around Falls Church.

MR. SLENKER: Falls Church? Okay.

Mr. Stevenson, you are a real estate appraiser for the Fairfax County. Are you married, sir?

MR. STEVENSON: No.

MR. SLENKER: How long have you been a Fairfax County appraiser?

MR. STEVENSON: About eight years.

MR. SLENKER: Eight years?

Ms. Weinert, your husband is a . . .

[p. 75] **MS. WEINER:** I am not married.

MR. SLENKER: You are a systems analyst?

MS. WEINERT: Yes.

MR. SLENKER: For whom?

MS. WEINERT: Synetics Corporation in Vienna.

MR. SLENKER: What field are they concerned with?

MS. WEINERT: Largely, computer networks and navigation systems.

MR. SLENKER: Anything that has to do with the health care system?

MS. WEINERT: We run a . . . occasionally, none of the offices that I am involved with, but we run a health disk for the Health Care Financing Administration, I believe, out of the Columbia office.

MR. SLENKER: Is that a government institution?

MS. WEINERT: Yes.

[p. 76] **MR. SLENKER:** Oh, I see. But so far as the everyday delivery of health care services . . .

MS. WEINERT: Oh, no.

MR. SLENKER: And things of that nature, that is not what your company does or has done?

MS. WEINERT: No.

MR. SLENKER: Ms. Roach, what classes do you teach?

MS. ROACH: Third grade gifted classes in Fairfax County.

MR. SLENKER: Third grade gifted classes? How long have been a teacher?

MS. ROACH: 18 years.

MR. SLENKER: Mr. Skofstad?

MR. SKOFSTAD: Correct.

MR. SLENKER: Your wife is indicated on the jury list as being in investigations. What type?

MR. SKOFSTAD: She works [p. 77] for the Defense Investigative Service which does background investigations for the FBI.

MR. SLENKER: Is she an FBI type or . . .

MR. SKOFSTAD: No, it is a defense firm which belongs to the government.

MR. SLENKER: So, it is an in-house agency type investigator?

MR. SKOFSTAD: Yes.

MR. SLENKER: Ms. Null, what type of special events do you plan at George Mason?

MS. NULL: Everything. I planned the Governor's visit last week. I plan the commencement. I plan House Appropriations meetings, ground breakings, whatever.

MR. SLENKER: All of it.

MS. NULL: All of it.

MR. SLENKER: Ladies and gentlemen, as you can tell, we are interested here in getting a panel that will sit in judgment of this case that will be entirely fair, not bothered by prejudices or biases [p. 78] one way or the other. So, I would ask each of you if there is anything within your knowledge that you think might disqualify you or might place you in a position where you could not be totally unbiased as you listen to this evidence and as you decide the case as between the Plaintiff and the Defendant here.

(No response.)

MR. SLENKER: Thank you. Do any of you believe that the medical profession can cure everything?

(No response.)

MR. SLENKER: Do any of you believe that doctors can fix anything?

(No response.)

MR. SLENKER: Any of you believe that doctors are perfect?

(No response.)

MR. SLENKER: Thank you very much. That is all, You [sic] Honor.

THE COURT: Would you pass the list, please?

Ladies and gentlemen, at this point . . . excuse me, [p. 79] before you pass the list, yes, sir?

JUROR: I should have said this earlier, but you really didn't give me the opportunity. I also have a conflict on time. I am supposed to be in Moscow tomorrow night, leaving for Moscow tomorrow night.

MR. SLENKER: Can we inquire as to when he was supposed to leave?

THE COURT: So, this is a prescheduled trip for business. Is that correct?

JUROR: Yes, it is. It was scheduled about two weeks ago. It wasn't my scheduling; it was someone else's.

THE COURT: All right, I will ask you to step down, sir.

JUROR: I am sorry.

THE COURT: We will call a replacement.

THE BAILIFF: Pauline Smith.

[p. 80] **PAULINE SMITH** having been duly sworn by the Court Reporter, was examined as follows:

THE COURT: Well, this is a test, Ms. Smith.

MS. SMITH: Hopefully, I have a good memory.

THE COURT: Starting back when I first told the jury what the case is about, did you hear that?

MS. SMITH: Yes.

THE COURT: And did you hear essentially the questions and statements which I made?

MS. SMITH: Yes.

THE COURT: Was there anything that I said to which you feel you should respond?

MS. SMITH: No.

THE COURT: Now, there have been an awful lot of questions asked by both sides. I assume you have been listening to those questions?

MS. SMITH: Yes.

[p. 81] **THE COURT:** As you heard those questions, was there anything that stood out to which you felt you should have responded if you had been on the panel at the time.

MS. SMITH: No.

THE COURT: Would either counsel like to follow up with any questions at this point?

MR. GARVER: I will keep it brief, but I would like to ask a couple, Your Honor.

THE COURT: All right.

MR. GARVER: Ms. Smith, you are a systems analyst?

MS. SMITH: Yes. Well, I am a financial analyst.

MR. GARVER: A financial analyst for the government?

MS. SMITH: No, for Bell Telephone.

MR. GARVER: I am sorry. Does that deal with rates and things like that?

MS. SMITH: No, it is [p. 82] primarily budgeting.

MR. GARVER: The judge already asked you the general question, and, hopefully, you have a great memory, but let me ask you a couple of the specific ones again. Have you ever been involved or anybody in your immediate family in any litigation or claims that have been made?

MS. SMITH: No.

MR. GARVER: Is there anything that troubles you about some of the debates that have gone on about medical malpractice cases that might interfere with your ability to render a judgment?

MS. SMITH: No.

MR. GARVER: All right, I don't have anything else, Your Honor. Told you I would be brief.

MR. SLENKER: Your Honor, bear with me.

THE COURT: Yes, sir.

MR. SLENKER: I just want a minute. I am looking for something.

Ms. Smith, I understand that you live in Reston?

[p. 83] **MS. SMITH:** That is correct.

MR. SLENKER: Are you familiar at all with Mr. Garver's law firm, Garver & Moller, that are located 11707 Bowling Green Drive, Reston?

MS. SMITH: No.

MR. SLENKER: Do you know if that place is close to where you live at all?

MS. SMITH: That is more western. I live around South Lakes High School area.

MR. SLENKER: So, you are in a different . . .

MS. SMITH: Yeah.

MR. SLENKER: Okay. Mr. Kayani, the Plaintiff in this case, lives at 2485 Irenes Court, Reston, Virginia. Is that close to where you live at all?

MS. SMITH: I have no idea where that is at. I have never heard of it.

MR. SLENKER: All right, you don't know . . .

[p. 84] **MS. SMITH:** No.

MR. SLENKER: . . . either one of them.

That is all, Your Honor.

THE COURT: Again, would you pass the list?

Ladies and gentlemen, at this time, what is going to happen, since this is your first day, I believe, of service, is each of the attorneys will alternately take strikes. That is, they strike one person, and then it goes to the other one, and that attorney strikes one, and it goes back until we are down to seven who will the hear the case.

If you are struck from the panel, please to do not take it personally. Often, it is a matter of pure numbers. We have to get down to seven one way or the other.

While they are doing that, I am going to read you the preliminary instructions that apply to this and every case that you will hear.

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF FAIRFAX

MOHAMMAD S. KAYANI

Plaintiff

v.

RICHARD L. FIELDS, M.D., et al

Defendants

AT LAW NO. 118723

FINAL JUDGMENT ORDER

This case came before the Court on Monday, September 27, 1993 for trial on the merits and the parties litigant were present in Court with counsel and announced they were ready to proceed. Both parties indicated to the Court they had Motions in Limine they wished to make and argue and have the Court rule upon before the case proceeded on with selection of the jury and presentation of evidence. A transcript of proceedings was taken by an authorized court reporter and the details of the limine motions can be gleaned from the transcript of the proceedings. Suffice it to say, however, the motion advanced by the Defendants with reference to certain amended anticipatory testimony from Plaintiff's expert was granted, to which action of the Court the Plaintiff duly noted and saved an exception. The Plaintiff's Motion in Limine seeking to prohibit certain witnesses from testifying in the case was made, argued and denied by the Court, to which action the Plaintiff duly noted and saved his exception.

A panel of thirteen (13) prospective jurors were then called to service and of that number a few were dismissed for cause and they were replaced by others from a list of alternates that had been selected to serve if the need arose. Ultimately, a panel of thirteen (13) jurors was found acceptable to the parties and each side then exercised their pre-emptory strikes leaving a panel of seven (7) jurors ~~that were placed upon their oaths to well and truly try the issues joined in the case.~~ [S.M.G.][N.F.S.] Plaintiff, by and through counsel, advanced a challenge to the basis upon which the defense had struck three jurors and upon arguments made and considered, the Court denied the challenge or overruled the motion made by Plaintiff as to which Plaintiff duly noted and saved his exception. *Thereafter, the jury was sworn.* [N.F.S.][S.M.G.]

Opening statements were then delivered by the respective parties and the Plaintiff began presentation of his evidence, testimony and proof which was completed on the late afternoon of September 28, 1993 at which time Plaintiff rested his case.

Thereafter, the defense made motions to strike the evidence and for summary judgment as to the whole case and as to certain elements thereof upon which arguments were held and the Court, in due course of time, denied the motions in every respect, to which action the Defendants duly noted and saved their exceptions. The defense case then was presented and took the major portion of September 29, 1993 when the defense evidence was concluded. At that point, Plaintiff moved to strike the Defendants' evidence and that motion was argued, duly considered and denied to which action of the Court the

Plaintiff duly noted and saved an exception. The Defendants, by and through counsel, advanced their renewed motions to strike the evidence which, after argument and due consideration, the Court denied, to which action of the Court the Defendants duly noted and saved an exception.

Instructions as were tendered by the parties were then considered by Court and counsel and many were granted and some denied by the Court to which action the aggrieved party duly noted and saved exceptions and on the morning of September 30, 1993 the jury reconvened for the Court's charge and final arguments which were then delivered and the jury received the case for deliberation at about 11:30 a.m. that morning. In due course of time the jury indicated they had reached a unanimous verdict in the case and at approximately 12:25 p.m. they returned to the courtroom and announced the unanimous verdict in favor of the Defendants. The Plaintiff moved to have the jury polled and such was done with each individual juror affirming verbally that such constituted his or her verdict. The Court then discharged the jury from service and Plaintiff asked for and was granted time within which to file post-verdict motions.

With reference to all judicial rulings mentioned above as well as those that here follow, the reporter's transcript will show and verify the details of objections, then stated, exceptions noted and preserved along with the reasons, grounds and/or basis for them.

The Plaintiff filed his post-verdict motions and the case again came before the Court on the 22nd day of October, 1993 for arguments on those motions and a

decision by the Court. Upon due consideration of those motions, the Court denied them all to which action the Plaintiff duly noted and saved an exception and it, therefore,

APPEARING TO THE COURT that judgment ought to be entered in accordance with the verdict of the jury in the case and that the case should stand dismissed with prejudice based upon the jury's finding; it is therefore,

ADJUDGED and ORDERED that the verdict of the jury ought to be, and is hereby, confirmed as to form and substance; and it is further,

ADJUDGED and ORDERED that the Plaintiff recover nothing of and from the Defendants in this case and that the Defendants ought to be, and they are, hereby granted judgment and the case ought to be, and it is hereby dismissed with prejudice as concluded and is ORDERED stricken from the docket of this Court.

AND THIS ORDER IS FINAL.

Any party in interest may have a certified copy of this Judgment Order forthwith upon its signature and entry.

Signed and Entered this 22nd day of October, 1993.

/s/ Michael P. McWeeny
Hon. Michael P. McWeeny
Fairfax County Circuit Judge

SEEN *& EXCEPTED TO FOR THE REASONS ARGUED HEREINBEFORE AND/OR STATED IN THE PLEADINGS & TRANSCRIPT*

/s/ Steven M. Garver
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APPENDIX C

COMMONWEALTH OF VIRGINIA:

IN THE CIRCUIT COURT FOR
THE COUNTY OF FAIRFAX

MOHAMMAD S. KAYANI,
Plaintiff,

v.

RICHARD L. FIELDS, M.D., ET AL,
Defendants.

At Law No. 118723

ORDER

THIS CAUSE COMES UPON the motion of the Plaintiff, Mohammad S. Kayani, by counsel, and upon his objection to the transcript filed herein, specifically as to the transcript of September 27, 1993, wherein at Pages 89 and 89A it would appear that the record is incomplete; said motion being made pursuant to Rule 5:11 and Rule 5:12 of the Rules of the Supreme Court of Virginia.

AND IT APPEARING TO THE COURT that said record is incomplete and that the Plaintiff has complied with the provisions of Rule 5:11, *to which ruling Defendant objects*, it is therefore,

ORDERED, ADJUDGED AND DECREED THAT:

1) The procedural requirements of Rule 5:11 have been satisfied;

2) The record should reflect that the following occurred at the Bench, on the record, beginning at Line 2

on Page 89A of the transcript of the proceedings of September 27, 1993:

> Mr. Garver made an objection to the pre-emptory strikes made by Mr. Slenker and requested that Mr. Slenker provide and state a neutral, clear and objective basis for his pre-emptory strikes. ~~Mr. Garver also objected to the panel being sworn.~~ [M.P.M.] He proffered that Mr. Slenker's three strikes were all women; that Mr. Slenker had asked those women no individual questions; and there was nothing in the answers from those women in any specific answers to make them stand out one way or another or for Mr. Slenker to have any basis upon which to make the strikes.
>
> Mr. Garver further represented that he made the motion pursuant to *Batson v. Kentucky*, 476 U.S. 79, 90 L.Ed. 2d 69, 106 S.Ct. 1712 (1986) *and Edmondson v. Leesville Concrete*, 500 U.S. ___, 111 S.Ct. 2077 (1991). ~~and the line of cases which have evolved therefrom, including *Faison v. Hudson*, 234 Va. 397, 417 S.E.2d 305 (1992) decided by the Virginia Supreme Court.~~ [M.P.M.] Mr. Garver further argued that his client was entitled to a full cross-section of the community on the jury and challenged Mr. Slenker's strikes as gender-biased. He argued that the *Batson and Edmondson* ~~and *Faison*~~ arguments should apply to gender and not merely race. He indicated that though the Fourth Circuit had ruled that *Batson* and *Edmonson* do not apply to gender bias in pre-emptory strikes, its ruling was based upon the fact that the United States Constitution does not protect against discrimination based upon gender. However, he further argued ~~that *Faison v. Hudson*, decided by~~

~~the Virginia Supreme Court, recognized that the theories of *Batson* and *Edmondson* applied in Virginia, and argued~~ [M.P.M.] that the due process clause of the Virginia Constitution *does* apply to gender. Mr. Garver argued that the Virginia Constitution prohibits discrimination based upon gender. ~~and therefore, the *Faison* theory should apply.~~ [M.P.M.]

Mr. Slenker indicated that this was ridiculous, and inquired if Mr. Garver was going to state an objective rational basis for each of his pre-emptory strikes, noting one of Mr. Garver's strikes was of Asian descent. Mr. Garver offered to state for the record a neutral basis for each strike he made and the Court inquired of Mr. Slenker if he was making a motion to require Mr. Garver to state an objective rational basis for this pre-emptory strikes. Mr. Slenker indicated he was not. The Court then indicated that the Plaintiff need not then state a basis and inquired of Mr. Slenker if he cared to state a basis for his pre-emptory strikes in response to Mr. Garver's objection/motion, whereupon Mr. Slenker said no, he would not state any basis for pre-emptory strikes, but he asked the Court to note that the panel was mostly women *and that his last strike was decided between two women*. The Court then denied the motion by Mr. Garver, and noted for the record that the panel was mostly women. The Court further stated that there were only four men on the venire *and that the Plaintiff struck one of them with the first strike.*

The Court ruled the Plaintiff's objection was overruled, noted the Plaintiff's exception to its ruling, and preserved the objection prior to the panel being sworn.

THE RECORD IS THUSLY AMENDED AND IT IS
SO ORDERED.

ENTERED THIS 14th DAY OF January, 1994.

/s/ Michael P. McWeeny
The Honorable
Michael P. McWeeny

I ASK FOR THIS:

/s/ Steven M. Garver
Steven M. Garver, Esquire,
VSB# 015145
Cheryl G. Rice, Esquire,
VSB#33574
Counsel For Mohammad S. Kayani
11707 Bowman Green Drive
P.O. Box 2430
Reston, Virginia 22090
(703) 471-1090

SEEN *AND OBJECTED TO**:
/s/ *Present/signature waived.*
Norman F. Slenker, Esquire
Counsel for Defendants

---

* *Defendant's first objection to this proceeding is based upon argument that Rule 5:11 has not been complied with and the court has no jurisdiction to consider this Motion as the Plaintiff did not make timely filings in accord with Rule 5:11(c)(1). Defendant's second objection, without waiving the first objection, is that the supplement to the record is inaccurate.*

APPENDIX D

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 6th *day of* April, 1994.

Mohammad S. Kayani, Appellant,

against Record No. 940110
Circuit Court No. L-118723

Richard L. Fields, M.D., et al., Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By:

illegible

Deputy Clerk

APPENDIX E

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 10th *day of* June, 1994.

Mohammad S. Kayani, Appellant,

against Record No. 940110
Circuit Court No. L-118723

Richard L. Fields M.D., et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 6th day of April, 1994 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste:

illegible

Clerk